

1700192 (Migration) [2018] AATA 5876 (6 December 2018)

DECISION RECORD

DIVISION:	Migration & Refugee Division
CASE NUMBER:	1700192
MEMBER:	Michael Cooke
DATE:	6 December 2018
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal affirms the decision not to grant the applicant a Partner (Migrant) (Class BC) visa.

Statement made on 06 December 2018 at 4:38pm

CATCHWORDS

MIGRATION – Partner (Migrant) (Class BC) visa – Subclass 100 – not the spouse or de facto partner of the sponsor – family violence claim – no prior existence of relationship – sponsor’s continued link with ex-wife – home visit indicated lack of shared living arrangements between sponsor and applicant – decision under review affirmed

LEGISLATION

Migration Act 1958, ss 65, 376

Migration Regulations 1994, Schedule 2 cls 100.221, 100.221(4)(b),(c)(i), r 1.15A(3)

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 378 of the Migration Act 1958 and replaced with generic information.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration on 21 December 2016 to refuse to grant the applicant a Partner (Migrant) (Class BC) visa under s.65 of the *Migration Act 1958* (the Act).

2. The applicant applied for the visa on 30 March 2012 on the basis of her relationship with her [sponsor]. At that time, Class BC contained Subclass 100. The criteria for the grant of this visa are set out in Part 100 of Schedule 2 to the Migration Regulations 1994 (the Regulations).
3. The primary criteria must be satisfied by at least one applicant. Other members of the family unit, if any, who are applicants for the visa need satisfy only the secondary criteria. Relevantly to this matter the primary criteria include cl.100.221 which requires the applicant to be the spouse or de facto partner of the sponsor, unless the relationship has ceased and certain circumstances exist. These include that the applicant, or a member of the family unit, has suffered family violence committed by the sponsor: cl.100.221(4)(b), (c)(i). The applicant claims this occurred in her case.
4. The delegate refused to grant the visa on the basis that the applicant did not meet cl.100.221 because he found that a prior genuine spouse relationship did not exist before the relationship ceased and there was evidence of family violence.
5. The applicant appeared before the Tribunal on 16 August 2018 to give evidence and present arguments.
6. The applicant was represented in relation to the review by her registered migration agent. The representative attended the Tribunal hearing.
7. The applicant's representative forwarded a submissions pre and post hearing concerning the case along with supportive documentation and the required Orders pursuant to a judicial family violence claim (T1, ff. 46-137).
8. For the following reasons, the Tribunal has concluded that the **decision under review should be affirmed**.

CONSIDERATION OF CLAIMS AND EVIDENCE

9. In the present case, the applicant claims the relationship with [(the sponsoring partner)] has ceased and she has been the victim of family violence. However, the prior existence of a relationship is a precondition to an assessment of a family violence exception claim pursuant to cl 100.221(4).
10. Various adverse issues leading to the eventual refusal of the application were canvassed in the decision record (on the Tribunal file). The principal adverse evidence was the fact that the sponsor had listed (twice) the prior address where he lived with his ex-wife as his address on his passenger arrival cards. He listed his intended address in Australia as [Address 1] during the period the applicant purported to have resided with the sponsor at [Address 2]. Furthermore his ex-wife was listed as his emergency contact and travelled with him to China at various times. This information was contrasted with the claim that the applicant and sponsor had been married since 2012 the applicant having arrived in Australia on a Subclass 309 visa.
11. As a result of Departmental concern a 'home visit' was undertaken by Departmental officers on 2 February 2016 at the parties' official address. During the 'home visit' neither the applicant nor her sponsor was able to demonstrate that they had a shared arrangement in regards to domestic tasks. The parties also did not display any knowledge of each other's daily routine - despite claiming to share a room as part of a larger household. During the 'home visit' the applicant claimed that she and her sponsor shared a room in the house and lived with 5 other people. Departmental officers noted that there was minimal clothing or personal effects of the sponsor located in their shared room. The items present appeared to

have been placed for appearance sake rather than being indicative of normal living practices within her house.

12. During the interview the applicant was asked about telephone contact between her and the sponsor. She provided her mobile phone and message logs. Departmental officers noted that apart from a number of calls made in short succession to her sponsor (following the arrival of Departmental officers) - the only other phone calls between her and her sponsor had been on 25 January 2016. She advised she used 'WeChat' when the applicant was overseas but that she had deleted the recent communication from her sponsor for storage reasons whilst all the while maintaining other messages from 5 January 2016.
13. The applicant also had little knowledge of the sponsor's daughter from his first marriage. She has insisted in response to this observation that he had discouraged her from having a relationship with her - being a child from his former marriage.
14. In her response to a Natural Justice letter sent as part of the follow up to the Departmental investigation of the parties' relationship, the applicant claimed (through her migration agent) that the relationship with her sponsoring partner ended sometime in 2016. She claimed that she moved out of the marital home [in] May 2016. The decision record (on the Tribunal file) notes that she was unable to provide a definite date for the breakdown of her relationship whilst all the while maintaining that her relationship with her sponsor was genuine up until that moment. The incidences of family violence began in January 2015 she has subsequently claimed to the Tribunal. The decision record indicates that the applicant failed to notify the Department of both the breakdown of her relationship and a change of address until 18 October 2016. She received the natural justice letter on 4 August 2016. She began the process for domestic violence orders and the final Domestic Violence Order was issued in January 2017. She has blamed her tardiness in declaring the family violence to the authorities as being a product of lack of awareness of her legal options, cultural shame regarding marital breakdown and awareness that this sort of thing was common in her homeland.

15. The Hearing

16. The Tribunal alerted the applicant and her representative that there was a s.376 certificate on the Department file. The Tribunal explained the reasons why the Certificate was issued. The Tribunal read out the covering information on the Certificate for the benefit of the applicant. The representative advised that she was aware of the Certificate. The applicant made no comment on the Tribunal's remarks. The Tribunal informed the applicant that the Tribunal had a discretionary right to reveal the information covered by the Certificate. The Tribunal advised her and the representative that after reading out the Departmental description of the confidential information disclosure it was satisfied that it was a valid Certificate. The applicant made no comment on the Tribunal's remarks and explanation.
17. The Tribunal explained the nature of a Subclass 309/100 Partner visa and that the case was a refusal of a permanent residency by the Department. It referred to the withdrawal of the sponsorship and the exceptions pursuant to Subclass 100 and explained what a family violence claim required and the impact of reg.1.15A(3) and the requirement that a pre-existing relationship existed before the relationship ceased
18. The applicant was asked whether she had any explanation for the fact that the sponsor had written down his ex-wife's address as his own address on the arrival cards. She said her husband wrote down that address. She only found out when the Department told her. The Tribunal said this evidence was significant as it happened twice and strongly indicated they were not living together. The Tribunal then addressed the 'home visit' information some time later. It explained what a 'home visit' was.

19. The Tribunal said that the Department had the arrival card information and then from that they undertook the 'home visit'. The Tribunal read from the decision record on the Tribunal file and the adverse observations such as the lack of awareness of family routine, minimum clothing of the sponsor and that the clothing appeared to be purposefully placed there. The Department officers then investigated and commented on the lack of telephone traffic between the parties and that the explanation for the lack of traffic between spouses was not indicative of a joint household and genuine and ongoing relationship. The impact of this was that the visa was refused as she did not meet the reg.1.15A(3).
20. The Tribunal asked her did she want to make a comment on this evidence and their relationship in view of the investigation findings and refusal of the visa. She said the delegate's conclusions were not all correct. Particularly about the financial relationship aspect. She said in 2014 she issued a second submission. Her English was not good. They did not get professional help and her husband handled everything. They were in a genuine relationship. The documents that her husband submitted were incomplete like the bank statement for a one month period for instance. She double-checked their joint account from 2012-2016 and had submitted the documents to the Tribunal. She still needed more time to get the bank information and she offered to provide the Tribunal with additional information.
21. The Tribunal then explored the social relationship. There were photographs provided with them and other people taken in different situation and statutory declarations saying they knew you but the delegate was not satisfied with the declarations' content.
22. The Tribunal then observed that the delegate had juxtaposed the observations at the home visit with the information in the statutory declarations and was not satisfied there was a relationship.
23. The Tribunal then explored the nature of the parties' commitment. The parties had been together since 2011 and the marriage ended sometime in 2016. The Department had granted the applicant a Temporary Partner visa but after investigation two years later they were not satisfied there was a relationship.
24. It explained that for instance there was little knowledge by her of the sponsor's daughter. She was asked why she did not know about the sponsor's daughter. She said she had never met her. She was told she was [at] university. She had no idea how old she was. How old was she when she first married - the Tribunal asked. Maybe she was 20+ years she replied.
25. The Tribunal observed the sponsor had travelled with and spent time together overseas in 2013 twice and had done so again on 4 June 2015 according to the arrival card. The sponsor put his ex-wife down as the emergency contact. The Tribunal asked her to explain the situation. She could not explain why. She had no idea. She could not explain in response why the sponsor had given his ex-wife's address as his contact address on the arrival cards. She said she had asked him when she found out in 2016 when told by the Department. He did not answer directly and said it was not her business and do not ask. She was so confused by this up to now. They got married and lived together as a couple even during the family violence period. She admitted they had ups and down in life and arguments like other people but she believed her loved her. She had no idea why her husband had done this on the incoming passenger cards in 2013 and 2015.
26. The Tribunal observed that the Departmental letter was sent on 4 August 2016 and she did not respond to the letter for 2 months. She was asked why it took her 2 months to answer the Department's Natural Justice letter and further inform the Department of the marital breakdown. She replied that she had moved out in May 2016 and did not get the letter because she never went back to her previous address. She said she reported the violence to the Police and Department and they told her not to go back to her previous address. She

then went to find a migration agent and then spoke to the Police and her doctor and a psychologist. She finalised all this by October 2016 and did not think it was an issue. The time was taken up preparing the documentation for her family violence claim. The Tribunal suggested she should have gone to the post office to change her delivery details. She said she only went to the RTA to change her vehicle licence details.

27. The applicant had also provided a comprehensive submission rebutting the adverse findings and information regarding the family violence claim. She has provided a report from a doctor and a psychologist. She provided information from her bank and her abortion provider a Joint Tenancy Agreement and photographs from 2014 related to her social activities and her Statutory Declaration addressing the significant events from the start of her relationship and particularly the period 2014-15. At point 46 she reiterated that she had a genuine and ongoing relationship before the relationship ceased.
28. The applicant was asked if she would like to make a personal statement. She said the Senior Member had covered all the matters. The Tribunal then briefly summarised her responses to the adverse information. Her total lack of awareness of the delegate's findings due to her husband's control of the paperwork. Everything would be revisited and she would be getting a brand new review.
29. She had also offered to provide further information pursuant to reg.1.15A(3) including bank statements photographs, statutory declaration from friends and telephone traffic. She said her husband had prepared documentation in 2014 to support the permanent residency. She said she and her husband had a routine life. She went to work and it was very difficult to make calls. During work hours they used WeChat and she deleted a lot of the traffic due to capacity issues with the phone as she wanted to leave space for photographs etc. rather than boring conversations about what to eat. The tribunal agreed to give her further time to submit information.

30. Regulation 1.15A(3) Consideration and Findings

31. Financial Aspects

32. The applicant has claimed (in her submission post-hearing) that In December 2012 she and the sponsor opened a bank account in joint names with the Commonwealth Bank and pooled their financial resources and made all their significant joint expenses from the money in that joint account. She insists that the parties also entered into a Joint Tenancy Agreement dated 15 January 2013 for the period 15 January 2013 until 14 July 2013. She has provided handwritten rent receipts covering the period from 9 February 2013 until 8 April 2014 and utility bills as evidence of rental payments for the rental property.
33. Subsequently the applicant has claimed that the Joint Bank account was opened by both myself and my spouse in 2013. She insists that during the period of the relationship and 'including during the period of domestic violence and after moving out of the marital home on 19 May 2016 the parties continued to operate/use the joint bank account and the applicant continued to operate the joint bank account as her sole account. She closed the joint bank account on 31 December 2018 (*applicant's error*).
34. The Tribunal has received evidence post-hearing. The applicant has provided bank statements for a [Joint] account dating from January 2013 to December 2016. She explained that for practical ease of banking she continued to use the joint account post the parties' separation.
35. The Tribunal has considered the evidence of the parties' financial relationship. The applicant has claimed to have had joint liabilities and commitment with her sponsor such as rent. She

has claimed that there was financial pooling as exemplified by the joint bank account. The Tribunal excepts that the parties created a joint bank account and had a rental liability at one stage. However, the Tribunal has considered the applicant's financial evidence in the light of its adverse findings on the parties' household relationship.

36. The applicant claimed she and her sponsor rented [Address 3] between 5 July 2014 and 19 August 2015 - according to the tenant trust ledger records (provided by the applicant). The amount payable per week was \$390 until 26 May 2015 and \$410 until August 2015. The Tribunal has cross referenced the ledger payments with the submitted bank statements during that period. The Tribunal notes that there is only one rental payment that appears in the accounts for the correct rental amount (\$390). This was paid on 30 September 2014. There is a further rent payment from the joint account dated 9 January 2016. This is the only evidence of any joint rental payments between the parties. The Tribunal did find evidence of a deposit return from the Rental Bond Board to the joint account on 2 September 2015. However, when cross referenced the rental payments are not elaborated in the joint account matching the rental ledger amounts.
37. The bank statements indicate many transfers of money to various other [accounts] and other persons (particularly [Person A]) and to other debits such as chemists or telephone providers. However, not once in any of the bank statements proffered by the applicant is the [sponsor]. He is not named in the itemised transactions as a recipient of funds. The applicant indicated that she continued to utilize the joint account for convenience reasons even after the claimed marital separation. There is, therefore, no accurate way of assessing if the account was ever evidence of genuine 'pooling' of finances such as sharing of household expenses.
38. The Tribunal is not satisfied that the parties' financial arrangements are consistent with those of parties living in a genuine spousal relationship - particularly when this information is juxtaposed with the adverse findings made elsewhere.

39. Nature of the household

40. Evidence gathered at the 'home visit' undertaken by Departmental officers on 2 February 2016 was that neither of the parties was able to demonstrate that they had a shared arrangement in regards to domestic tasks. For instance they did not display any knowledge of each other's daily routine - particularly when taking into account the claim they shared a room as part of a larger household with 5 other people. Furthermore minimal clothing or personal effects belonging to the sponsor were located in the shared room and the clothing present appeared to have been placed there for appearance sake.
41. The applicant's representative has submitted that the parties "were living together in a shared accommodation" and that she was totally unaware that the sponsor has listed his intended address in Australia as [Address 1] or having listed his ex-spouse's name under emergency contact in the incoming passage cards and that they were living together in shared accommodation and shared their household chores".
42. Despite these assurances evidence from passenger arrival cards indicates that the sponsor informed on most of his arrival cards that his ex-wife's address was his residence and she was also his emergency contact.
43. When all the unsatisfactory evidence from the 'home visit' is juxtaposed with the arrival card information - the Tribunal is not satisfied that the parties' household arrangements were consistent with those of parties living in a genuine spousal relationship.

44. Social aspects of the relationship

45. The home visit summary discloses (in the decision record on the Tribunal file) that when the applicant's telephone traffic was viewed by the officers - there was a lack of evidence of telephone communication between the applicant and sponsor. Her claim that she only communicated on *WeChat* with the sponsor when he was overseas and due to the limited data she was unable to store all the communication materials on the phone" is given little weight by the Tribunal when juxtaposed with the other adverse information from the passenger arrival card information. The lack of evident telephone traffic suggests the parties had little reason to talk and that they were not engaged in a genuine social relationship.
46. The applicant claimed that her sponsor discouraged her from ever meeting his daughter and seemed in the hearing to know few details about her. When this claim is juxtaposed with evidence he accompanied his ex-wife on a number of flights to China it could be concluded he did not wish to divulge his marriage to his daughter. The applicant claims she was unaware that he had put his ex-wife's address as his domicile and emergency contact. When she asked about this the sponsor suggested it was none of her business. The tribunal is not satisfied that this is indicative of the parties representing themselves to other people as a married couple.
47. The applicant has claimed that the couple have spent time together and that they have undertaken joint social activities. Statements, declarations and photographs evidencing this were provided to the Department and Tribunal. These photographs date from 2012 to 2014 - according to the applicant's own annotation. The Tribunal accepts this evidence, however, gives it little weight when juxtaposed with the other evidence found by the Department on the arrival cards and 'home visit'. The Tribunal finds the adverse evidence from the 'home visit' and arrival cards more convincing. This information is not indicative of the parties representing themselves to other people as a married couple.
48. The Tribunal is not satisfied that the parties' social arrangements were consistent with those of parties living in a genuine spousal relationship.

49. **Nature of the commitment of the relationship**

50. The applicant and the sponsor claim they have known each other since April 2011 and married [in] January 2012. She claims to have lived a normal life with her sponsor until incidences of family violence began in January 2015. Despite these claimed incidences, the applicant informs became pregnant in March 2016 and on the sponsor's insistence she aborted the child in April 2016 despite her desire to have a child. The Tribunal is not satisfied that this is indicative of companionship and emotional support that a spousal couple should draw from each other.
51. The applicant has explained that her marriage to an older previously married man was idyllic and going well until they went to China in June 2014. The sponsor's mother was ill and subsequently died. She claimed that following the trip the sponsor had a total change of personality following his devastation at the loss of his mother and became abusive towards her and committed domestic/family violence. This she claims created the scenario which led inevitably to the cessation of the marriage induced family violence. The applicant has then approached the Police and secured a Domestic Violence Order. The applicant was unable to inform the delegate of the definite date or even month of the breakdown of the relationship despite it being a life-changing event and claims the relationship was genuine. The applicant did not engage with the Department including informing it of a change of address until 18 October 2016 (2 months later). The applicant informed that she did not approach the Post Office to change her mailing address either. The Tribunal notes the applicant's claim she was advised by her close friend (from the inception of her marriage) ([Person A]) to seek out Police assistance. However, this only took place in 2016. Despite their claimed closeness and bank joint account evidence that they transferred money between each other from as

early as 2013 (see applicants' bank statements submitted to the Tribunal) and "was in regular contact" - the applicant's friend ([Person A]) informs in a submission to the Tribunal that "at no time before this event (sometime in May 2016) had she mentioned any of her problems to me" (T1, f.110).

52. The parties have been the subject of a significant and thorough on-site investigation by the Department to confirm the genuineness of the parties' domestic relationship. The 2016 'home visit' which took place involved both an interview and thorough observation of their claimed household by the Department officers and they were present at the time. The officers' conclusion was that the parties "had not established a joint household or that (they) were maintaining a genuine and continuing relationship prior to the breakdown of the relationship". The applicant was then issued with a Natural Justice letter as a result of the concern in the Department with the resulting adverse observations from the visit. The applicant took 2 months to respond to the letter and had not bothered to seek a change of address at the Post Office.
53. The Tribunal is aware of the significant discrepancy in the parties' knowledge of each other displayed in the 'home visit'. When juxtaposed with the arrival card evidence that the sponsor gave of his ex-wife's address as his home address (the same house he occupied previously with his now ex-wife) the flights to China together and that she was his emergency contact rather than the woman he married in 2012 - leads the Tribunal to conclude that the parties did not share a mutual commitment to a shared life. When the whole of the evidence is evaluated the Tribunal is led to the inexorable conclusion that the parties were not living together and moreover that they rarely spoke to each other. This behaviour is not indicative of parties who see their relationship as long-term – if at all.
54. The parties have claimed that they have lived together since 2012 until the applicant was forced to flee the marriage due to family violence. However, the Tribunal is not satisfied that the nature of the commitment of the parties' relationship was consistent with those of parties living in a genuine spousal relationship.

55. Findings

56. The Tribunal finds that the prior existence of a relationship is a precondition to an assessment of a claim under the family violence exception in cl.100.221. The Tribunal has examined 'the full circumstances of the relationship' and is not satisfied from the cumulative evidence that the relationship between the parties ever existed.
57. Given the above conclusion that the claim of family violence has not been established, the applicant does not meet the requirements of cl.100.221(4)(b) and (c) for the grant of the visa. There is no evidence before the Tribunal that the applicant meets any of the alternative sub criteria. As the applicant does not meet an essential criterion for the visa, the Tribunal must affirm the decision under review.

DECISION

58. The Tribunal affirms the decision not to grant the applicant a Partner (Migrant) (Class BC) visa.

Michael Cooke
Senior Member

ATTACHMENT – EXTRACTS FROM THE MIGRATION REGULATIONS 1994

1.21 Interpretation

...

non-judicially determined claim of family violence has the meaning given by subregulations 1.23(8) and (9).

relevant family violence means conduct, whether actual or threatened, towards:

- (a) the alleged victim; or
- (b) a member of the family unit of the alleged victim; or
- (c) a member of the family unit of the alleged perpetrator; or
- (d) the property of the alleged victim; or
- (e) the property of a member of the family unit of the alleged victim; or
- (f) the property of a member of the family unit of the alleged perpetrator;

that causes the alleged victim to reasonably fear for, or to be reasonably apprehensive about, his or her own wellbeing or safety.

...

violence includes a threat of violence.

...

1.23 When is a person taken to have suffered or committed family violence?

- (1) For the purposes of these Regulations:

- (a) a person (the alleged victim) is taken to have suffered family violence; and
- (b) another person (the alleged perpetrator) is taken to have committed family violence in relation to the alleged victim.

Note Schedule 2 sets out which visas may be granted on the basis of a person having suffered family violence. The criteria to be satisfied for the visa to be granted set out which persons may be taken to have suffered family violence, and how those persons are related to the spouse or de facto partner of the alleged perpetrator mentioned in this regulation.

Circumstances in which family violence is suffered and committed — injunction under Family Law Act 1975

- (2) The alleged victim is taken to have suffered family violence, and the alleged perpetrator is taken to have committed family violence, if, on the application of the alleged victim, a court has granted an injunction under paragraph 114(1)(a), (b) or (c) of the Family Law Act 1975 against the alleged perpetrator.
- (3) For subregulation (2), the violence, or part of the violence, that led to the granting of the injunction must have occurred while the married relationship between the alleged perpetrator and the spouse of the alleged perpetrator existed.

Circumstances in which family violence is suffered and committed — court order

- (4) The alleged victim is taken to have suffered family violence, and the alleged perpetrator is taken to have committed family violence, if:
 - (a) a court has made an order under a law of a State or Territory against the alleged perpetrator for the protection of the alleged victim from violence; and
 - (b) [...] order was made after the court had given the alleged perpetrator an opportunity to be heard, or otherwise to make submissions to the court, in relation to the matter.
- (5) For subregulation (4), the violence, or part of the violence, that led to the granting of the order must have occurred while the married relationship or de facto relationship existed between the alleged perpetrator and the spouse or de facto partner of the alleged perpetrator.

Circumstances in which family violence is suffered and committed — conviction

- (6) The alleged victim is taken to have suffered family violence, and the alleged perpetrator is taken to have committed family violence, if a court has:
 - (a) convicted the alleged perpetrator of an offence of violence against the alleged victim; or

- (b) recorded a finding of guilt against the alleged perpetrator in respect of an offence of violence against the alleged victim.
- (7) For subregulation (6), the violence, or part of the violence, that led to the conviction or recording of a finding of guilt must have occurred while the married relationship or de facto relationship existed between the alleged perpetrator and the spouse or de facto partner of the alleged perpetrator.

Circumstances in which family violence is suffered and committed — non-judicially determined claim of family violence

- (8) For these Regulations, an application for a visa is taken to include a non-judicially determined claim of family violence if:
 - (a) the applicant seeks to satisfy a prescribed criterion that the applicant, or another person mentioned in the criterion, has suffered family violence; and
 - (b) the alleged victim and the alleged perpetrator have made a joint undertaking to a court in relation to proceedings in which an allegation is before the court that the alleged perpetrator has committed an act of violence against the alleged victim.
- (9) For these Regulations, an application for a visa is taken to include a non-judicially determined claim of family violence if:
 - (a) the applicant seeks to satisfy a prescribed criterion that the applicant, or another person mentioned in the criterion, has suffered family violence; and
 - (b) the alleged victim is:
 - (i) a spouse or de facto partner of the alleged perpetrator; or
 - (ii) a dependent child of:
 - (A) the alleged perpetrator; or
 - (B) the spouse or de facto partner of the alleged perpetrator; or
 - (C) both the alleged perpetrator and his or her spouse or de facto partner; or
 - (iii) a member of the family unit of a spouse or de facto partner of the alleged perpetrator (being a member of the family unit who has made a combined application for a visa with the spouse or de facto partner); and
 - (c) the alleged victim or another person on the alleged victim's behalf has presented evidence in accordance with regulation 1.24 that:
 - (i) the alleged victim has suffered relevant family violence; and
 - (ii) the alleged perpetrator committed that relevant family violence.
- (10) If an application for a visa includes a non-judicially determined claim of family violence:
 - (a) the Minister must consider whether the alleged victim has suffered relevant family violence; and
 - (b) if the Minister is satisfied that the alleged victim has suffered the relevant family violence, the Minister must consider the application on that basis; and
 - (c) if the Minister is not satisfied that the alleged victim has suffered the relevant family violence:
 - (i) the Minister must seek the opinion of an independent expert about whether the alleged victim has suffered the relevant family violence; and
 - (ii) the Minister must take an independent expert's opinion on the matter to be correct for the purposes of deciding whether the alleged victim satisfies a prescribed criterion for a visa that requires the applicant for the visa, or another person mentioned in the criterion, to have suffered family violence.
- (11) The alleged victim is taken to have suffered family violence, and the alleged perpetrator is taken to have committed family violence, if:
 - (a) an application for a visa includes a non-judicially determined claim of family violence; and
 - (b) the Minister is satisfied under paragraph (10)(b) that the alleged victim has suffered relevant family violence.
- (12) For subregulation (11), the Minister must be satisfied that the relevant family violence, or part of the relevant family violence, occurred while the married relationship or de facto relationship existed between the alleged perpetrator and the spouse or de facto partner of the alleged perpetrator.
- (13) The alleged victim is taken to have suffered family violence, and the alleged perpetrator is taken to have committed family violence, if:
 - (a) an application for a visa includes a non-judicially determined claim of family violence; and

- (b) the Minister is required by subparagraph (10)(c)(ii) to take as correct an opinion of an independent expert that the alleged victim has suffered relevant family violence.
- (14) For subregulation (13), the violence, or part of the violence, that led to the independent expert having the opinion that the alleged victim has suffered relevant family violence must have occurred while the married relationship or de facto relationship existed between the alleged perpetrator and the spouse or de facto partner of the alleged perpetrator.